The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| WFS PHARMAGREEN, INC., Plaintiff, v. CANNA-PET, LLC, and DANIEL K. GOLDFARB, Defendants. | No. 2:16-cv-00491-RSL |
| DANIEL K. GOLDFARB and CANNA-PET, LLC, Counterclaim Plaintiffs, v. WFS PHARMAGREEN, INC., Counterclaim Defendant. | WFS PHARMAGREEN'S ANSWER TO AMENDED COUNTERCLAIMS |
| DANIEL K. GOLDFARB and CANNA-PET, LLC, Third-Party Plaintiffs, v. CANNA COMPANION, LLC; CANNA COMPANION PRODUCTS, INC.; and SARAH BRANDON and GREG COPAS, wife and husband and the marital community composed therein; and ROBERT STEWART and JANE DOE STEWART, husband and wife and the marital community composed therein, Third-Party Defendants. | |

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Plaintiff and Counterclaim Defendant, WFS Pharmagreen, Inc., answers Defendants' Amended Counterclaims, as follows:

**PARTIES**

1. Counterclaim Defendant WFS Pharmagreen, Inc. ("WFS") admits that Counterclaim Plaintiff Daniel K. Goldfarb ("Goldfarb") is a Washington resident. WFS lacks sufficient knowledge of the truth or falsity of the remaining allegations in Paragraph 1 of the Counterclaims and therefore denies the same.

2. WFS admits the allegations contained in Paragraph 2, of the Counterclaims.

3. WFS admits the allegations contained in Paragraph 3, of the Counterclaims.

**VENUE AND JURISDICTION**

4. WFS admits the allegations contained in Paragraph 4, of the Counterclaims.

5. WFS admits that this Court has personal jurisdiction over WFS. WFS denies the remaining allegations set forth in Paragraph 5, of the Counterclaims.

6. WFS admits that venue is proper in the Western District of Washington. WFS denies the remaining allegations set forth in Paragraph 6, of the Counterclaims.

**FACTS**

7. WFS denies that as early as September 23, 2013, Daniel Goldfarb and Canna-Pet began using CANNA-PET as a trademark in advertising, marketing, distributing, and selling dietary supplements for pets. WFS lacks sufficient knowledge of the truth or falsity of the remaining allegations in Paragraph 7, of the Counterclaims and therefore denies the same.

8. The referenced documents on file with the U.S. Patent and Trademark Office ("USPTO") speak for themselves. WFS lacks sufficient knowledge of the truth or falsity of the allegations in Paragraph 8, of the Counterclaims and therefore denies the same.

9. The referenced documents on file with the USPTO speak for themselves. Except as expressly admitted, WFS denies the remaining allegations set forth in Paragraph 9, of the Counterclaims.

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10. WFS admits that WFS contacted Mr. Goldfarb in May, 2014, to discuss the possibility of entering into a business relationship with Canna-Pet. Except as expressly admitted, WFS denies the remaining allegations set forth in Paragraph 10, of the Counterclaims.

11. WFS admits that Canna Companion's products are in direct competition with Canna-Pet's products. Except as expressly admitted, WFS denies the remaining allegations in Paragraph 11, of the Counterclaims.

12. WFS lacks sufficient knowledge of the truth or falsity of the allegations in Paragraph 12, of the Counterclaims, and therefore denies the same.

13. WFS denies each and every allegation contained in Paragraph 13, of the Counterclaims.

14. WFS admits that it sells products similar to those of Canna-Pet. Except as expressly admitted, WFS denies the remaining allegations in Paragraph 14.

15. The registration documents of CANNA-PET on file with the USPTO speak for itself. Except as expressly admitted, WFS denies the remaining allegations contained in Paragraph 15, of the Counterclaims.

16. The referenced assignment document for CANNA-PET on file with the USPTO speaks for itself. WFS lacks sufficient knowledge of the truth or falsity of the remaining allegations in Paragraph 16, of the Counterclaims and therefore denies the same.

17. WFS denies each and every allegation contained in Paragraph 17, of the Counterclaims.

18. WFS lacks sufficient knowledge of the truth or falsity of the allegations in Paragraph 18, of the Counterclaims, and therefore denies the same.

19. WFS denies each and every allegation contained in Paragraph 19, of the Counterclaims.

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20. WFS denies each and every allegation contained in Paragraph 20, of the Counterclaims.

21. WFS denies each and every allegation contained in Paragraph 21, of the Counterclaims.

## CLAIMS

### Count 1 – Infringement of a Registered Trademark

22. WFS restates its answers to Paragraphs 1 through 21, of the Counterclaims, as though fully set forth herein.

23. WFS denies each and every allegation contained in Paragraph 23, of the Counterclaims.

24. WFS denies each and every allegation contained in Paragraph 24, of the Counterclaims.

25. WFS denies each and every allegation contained in Paragraph 25, of the Counterclaims.

26. WFS denies each and every allegation contained in Paragraph 26, of the Counterclaims.

27. WFS denies each and every allegation contained in Paragraph 27, of the Counterclaims.

28. WFS denies each and every allegation contained in Paragraph 28, of the Counterclaims.

29. WFS denies each and every allegation contained in Paragraph 29, of the Counterclaims.

30. WFS denies each and every allegation contained in Paragraph 30, of the Counterclaims.

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**Count 2 – False Designation of Origin**

31. WFS restates its answers to Paragraphs 1 through 30, of the Counterclaims, as though fully set forth herein.

32. WFS denies each and every allegation contained in Paragraph 32, of the Counterclaims.

33. WFS denies each and every allegation contained in Paragraph 33, of the Counterclaims.

34. WFS denies each and every allegation contained in Paragraph 34, of the Counterclaims.

35. WFS denies each and every allegation contained in Paragraph 35, of the Counterclaims.

36. WFS denies each and every allegation contained in Paragraph 36, of the Counterclaims.

**Count 3 – Unfair Competition under Washington Law**

37. WFS restates its answers to Paragraphs 1 through 36, of the Counterclaims, as though fully set forth herein.

38. WFS denies each and every allegation contained in Paragraph 38, of the Counterclaims.

39. WFS denies each and every allegation contained in Paragraph 39, of the Counterclaims.

40. WFS denies each and every allegation contained in Paragraph 40, of the Counterclaims.

41. WFS denies each and every allegation contained in Paragraph 41, of the Counterclaims.

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**Count 4 – Unfair Competition under Washington Law**

42. WFS restates its answers to Paragraphs 1 through 41, of the Counterclaims, as though fully set forth herein.

43. WFS denies each and every allegation contained in Paragraph 43, of the Counterclaims.

44. WFS denies each and every allegation contained in Paragraph 44, of the Counterclaims.

45. WFS denies each and every allegation contained in Paragraph 45, of the Counterclaims.

46. WFS denies each and every allegation contained in Paragraph 46, of the Counterclaims.

**Count 5 - Libel**

47. WFS restates its answers to Paragraphs 1 through 46, of the Counterclaims, as though fully set forth herein.

48. WFS denies each and every allegation contained in Paragraph 48, of the Counterclaims.

49. WFS denies each and every allegation contained in Paragraph 49, of the Counterclaims.

50. WFS denies each and every allegation contained in Paragraph 50, of the Counterclaims.

51. WFS denies each and every allegation contained in Paragraph 51, of the Counterclaims.

52. WFS denies each and every allegation contained in Paragraph 52, of the Counterclaims.

53. WFS denies each and every allegation contained in Paragraph 53, of the Counterclaims.

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**Count 6 – Civil Conspiracy**

54. WFS denies each and every allegation contained in Paragraph 54, of the Counterclaims.

**FIRST AFFIRMATIVE DEFENSE**

Goldfarb and Canna-Pet fail to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Goldfarb and Canna-Pet have unclean hands, and seek to take advantage of their wrongdoing:

1. Goldfarb and Canna-Pet used unlawful marijuana in the products being sold under the CANNA-PET mark;
2. Goldfarb and Canna-Pet unlawfully converted the ownership of the CANNA-PET mark without the consent of the rightful owner; and
3. Goldfarb falsely represented in his application for trademark status that he was the true and rightful owner of the CANNA-PET mark.

**THIRD AFFIRMATIVE DEFENSE**

Goldfarb and Canna Pet lack standing to bring their Counterclaims because they never had a valid ownership interest in or to, or right to use, the CANNA-PET mark on which their Counterclaims are based.

**FOURTH AFFIRMATIVE DEFENSE**

Goldfarb and Canna-Pet were using unlawful marijuana in the products that were being sold under the CANNA-PET mark when WFS first used the CANNA-COMPANION mark in interstate commerce. Therefore, Goldfarb and Canna-Pet's counterclaims fail because the rights of WFS in and to the CANNA COMPANION mark are prior and superior to those of Goldfarb and Canna-Pet in the CANNA-PET mark.

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**FIFTH AFFIRMATIVE DEFENSE**

Goldfarb falsely represented that he was the true and rightful owner of the CANNA-PET mark in his application for trademark status for the CANNA-PET mark. Goldfarb also falsely represented in his application for trademark status for the CANNA-PET mark that he was the true and rightful owner of the CANNA-PET mark at the time of the alleged first intrastate and interstate sales.

**SIXTH AFFIRMATIVE DEFENSE**

The federal trademark registration of CANNA-PET (Registration No. 4,706,460), on which the Counterclaims are based, is invalid.

**SEVENTH AFFIRMATIVE DEFENSE**

The CANNA-PET mark is diluted and weak; therefore, Canna-Pet's (and Goldfarb's, if any) purported rights extend no further than to the specific mark that they allege they own, which is not confusingly similar to the CANNA COMPANION mark in terms of connotation, appearance and/or pronunciation.

**EIGHTH AFFIRMATIVE DEFENSE**

The CANNA COMPANION mark is not confusingly similar to the CANNA-PET mark.

**PRAYER FOR RELIEF**

Plaintiff and Counterclaim Defendant, WFS Pharmagreen, Inc., prays as follows:

A. For judgment dismissing Counterclaim Plaintiffs' Counterclaims;

B. For costs, disbursements and attorneys' fees as provided by statute; and

C. For such other relief as this Court deems just and equitable.

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DATED this 8th day of December, 2016.

VANDEBERG JOHNSON & GANDARA, LLP

By ______________________________
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